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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

ODESSA M. CARTER,

Plaintiff and Appellant,

v.

QUAN C. JAMES et al.,

Defendants and Respondents.

B206089

(Los Angeles County  
Super. Ct. No. TC019897)

APPEAL from a judgment of the Superior Court of Los Angeles County. William Barry, Judge. Affirmed.

Odessa M. Carter, in pro. per., for Plaintiff and Appellant.

Law Offices of Richard P. Keavney and Richard P. Keavney for Defendant and Respondent Quan C. James.

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Pro se plaintiff Odessa M. Carter appeals from a judgment in favor of her brother, defendant Quan C. James, in this action to quiet title. We affirm.

## **BACKGROUND**

The record, which consists only of the clerk's transcript, is sparse. Accordingly, our background discussion is brief.

Jeanette Williams was the mother of Carter and James. In 1991, Williams, who owned real property in Compton (the property), executed an individual grant deed placing the property into joint tenancy with James. Carter alleges that she lived with her mother at the property and paid the mortgage and property taxes. In 2005, Williams passed away. The following year, Carter filed an action to quiet title claiming ownership of the property based on adverse possession. James demurred on a number of grounds. Although there is no ruling in the record, the trial court apparently sustained the demurrer because Carter filed a first amended complaint. Like the original complaint, the amended complaint alleged that Carter owned the property through adverse possession.

The parties proceeded to a bench trial on the action. Carter appeared in pro per and presented her opening statement. Apparently, during her opening statement, Carter admitted that she had lived at the property with Williams' consent up until Williams passed away.<sup>1</sup> At the conclusion of Carter's statement, James moved for nonsuit. The trial court granted the motion for nonsuit, ruling: "Plaintiff acknowledged in her opening statement that she lived in the subject property with, and with the consent of, the then co-owner of the property, Jeanette Williams, until Ms. Williams's death in 2005. Therefore, Plaintiff had not been hostile to the interest of the owner of the property for at least five years, and as a matter of law could not prove adverse possession." The trial court entered judgment in favor of James, and Carter timely appealed.

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<sup>1</sup> Carter has provided no transcript of these proceedings. Our recitation comes from the trial court's summary of the proceedings in the final judgment.

## DISCUSSION

“A nonsuit following the plaintiff’s opening statement should be granted only where it is clear that counsel has undertaken to state all of the facts which he expects to prove, and it is plainly evident that the facts thus to be proved will not constitute a cause of action. [Quotation marks omitted.]” (*Wright v. Arcade School Dist.* (1964) 230 Cal.App.2d 272, 275.) We independently review a nonsuit, employing the same standards that govern the trial court. (*Saunders v. Taylor* (1996) 42 Cal.App.4th 1538, 1541-1542.)

Carter, as the appellant, has the burden of providing this court with an adequate record to assess error. (*Hernandez v. California Hosp. Medical Ctr.* (2000) 78 Cal.App.4th 498, 502.) “All intendments and presumptions are indulged to support [the judgment] on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) “[I]f the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed.” [Citations.]” (*Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416.)

“The elements necessary to establish title by adverse possession are: (1) tax payments, (2) actual possession which is (3) open and notorious, (4) continuous and uninterrupted for five years, (5) hostile and adverse to the true owner’s title, and (6) under either color of title or claim of right. The party asserting title by adverse possession has the burden of proving affirmatively each one of these elements. [Citations.]” (*California Maryland Funding, Inc. v. Lowe* (1995) 37 Cal.App.4th 1798, 1803 (*Lowe*).)

“In order to occupy another’s land with the intent to control it for purposes of gaining title through adverse possession, a person must exercise dominion over the property in such a way as to put the true owner on notice that the person claims a right, title and interest in the land.” (*Alcaraz v. Vece* (1997) 14 Cal.4th 1149, 1182.) “The

claim of right must be ‘hostile’ to the possessory rights of the true owner. Therefore, ‘[i]f the owner permits the person to use the land, the possession is not adverse.’” (*Ibid.*, quoting 4 Witkin, Summary of Cal. Law (9th ed. 1987) Real Property, § 97, p. 321<sup>2</sup>; *Southern Pac. Co. v. San Francisco* (1964) 62 Cal.2d 50, 56 [where use in inception is permissive, there cannot be adverse possession without clear actual notice to owner of adverse nature of subsequent possession].)

In her opening brief, Carter does not disavow her statement that she lived at the property with her mother’s permission. Instead, she argues that she paid taxes on the property while she lived there, and thus her possession of the property was “open, visible, and notorious to raise a presumption” of adverse possession. Paying taxes on claimed property is but one element of adverse possession. (*Lowe, supra*, 37 Cal.App.4th at p. 1803.) Another element is possession that is hostile and adverse to the true owner’s title. (*Ibid.*) Under the authorities cited above, Carter’s admission that she lived at the property with her mother’s permission negates the hostility element and is fatal to her claim of adverse possession.<sup>3</sup>

For these reasons, we affirm the trial court’s grant of nonsuit in favor of Carter.

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<sup>2</sup> The most recent Witkin Summary of California Law provides the same: A claim for adverse possession “must be adverse to that of the true owner. If the owner permits the person to use the land, the possession is not adverse.” (12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property § 216, p. 274.)

<sup>3</sup> Without a reporter’s transcript, we must assume the trial court was correct in stating that Carter made this admission during her opening statement.

## **DISPOSITION**

The judgment is affirmed. Respondent shall recover his ordinary costs on appeal.  
NOT TO BE PUBLISHED.

BAUER, J.<sup>\*</sup>

We concur:

MALLANO, P. J.

ROTHSCHILD, J.

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<sup>\*</sup> Judge of the Orange County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.